

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public)
Service Commission, on its own Motion,)
to consider appropriate modifications to)
the high-cost distribution and reporting)
mechanisms in its Universal Service Fund)
program in light of federal and state)
infrastructure grants.)

Application No. NUSF-139

Nebraska Public Service Commission

NOV 17 2023

Received

**SECTION II.B COMMENTS OF THE
NEBRASKA RURAL INDEPENDENT COMPANIES**

The Nebraska Rural Independent Companies (“RIC”)¹ submit these Comments in response to the Order Opening Docket, Seeking Comment and Setting Hearing entered by the Nebraska Public Service Commission (the “Commission”) in this matter on August 29, 2023.² The responses set forth below are limited to the issues presented by the Commission in Section II.B of the *NUSF-139 Order*. In the below Comments, RIC will first set forth the topic or question in response to which comments are requested in the *NUSF-139 Order* followed by RIC’s responsive comments. RIC appreciates the opportunity to provide these Comments to the Commission.

¹ Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Great Plains Communications, LLC, Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Sodtown Communications, Inc., and Three River Telco.

² *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider appropriate modifications to the high-cost distribution and reporting mechanisms in its Universal Service Fund program in light of federal and state infrastructure grants, Application No. NUSF-139, Order Opening Docket, Seeking Comment and Setting Hearing (Aug.29, 2023) (the “NUSF-139 Order”).*

I. POLICY GUIDELINES

RIC supports the Commission's initiative to review and potentially to revise and update its "strategic plan relative to broadband funding, maintenance of reliable and affordable voice and broadband services, and oversight"³ (the "Strategic Plan") first announced in 2016.⁴ The RIC member companies respectfully submit that in conducting this review process the Commission should be guided by the following policy guidelines that have been and currently are fundamental to the Commission's legislatively-delegated duties to oversee and administer the Nebraska Universal Service Fund ("NUSF"), and in particular, the NUSF High Cost Program (the "High Cost Program"):

- "[A]ccess to advanced telecommunications and information [broadband] services should be provided in all regions of the state." (*Neb. Rev. Stat.* § 86-323(2))
- "Quality telecommunications and information [broadband] services should be available at just, reasonable, and affordable rates." (*Neb. Rev. Stat.* § 86-323(1))
- To accomplish the foregoing, High Cost Program funding should be directed to support scalable fiber optic-based technology to minimize future investment costs and to maximize the capability to respond to consumer demands for increased broadband speeds. (*Neb. Rev. Stat.* § 86-324.01)
- The High Cost Program must continue to support ongoing expenses of the network and ensure that such support is used and available ". . . only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." (*Neb. Rev. Stat.* § 86-324(1))
- Consistent with the use of High Cost Program support requirements stated in *Neb. Rev. Stat.* § 86-324(1) noted above, recipients of High Cost Program support (as well as federal universal service support) should continue to be held accountable

³ *Id.* at 8.

⁴ See *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the universal service fund contribution methodology*, NUSF-100/PI-193, Order Seeking Further Comments at 5-6 (April 5, 2016), as further discussed in the Order and Order Seeking Further Comments and Setting Hearing at 18-19 (Feb. 22, 2017) ("2017 NUSF-100 Order").

to use such support for its intended purposes which, in turn, will provide the foundation to ensure that deployed networks demonstrably produce broadband speeds and quality telecommunications services according to statutory and regulatory requirements. (*Neb. Rev. Stat.* § 86-324(2)(a)-(f))

- Consistent with federal policies, the importance of protecting communications networks and those who use them from domestic and international cybersecurity threats must be recognized and the costs to implement such protections should be supported by the High Cost Program. (*Neb. Rev. Stat.* § 86-324(2)(d))
- The public interest will be advanced by the coordination between the Commission and the Nebraska Broadband Office (“NBO”) to foster a unified strategic plan for the deployment and operation of scalable, future-proof broadband networks in Nebraska.⁵

Evaluation by the Commission of existing goals for the High Cost Program and the Strategic Plan through the lens of the foregoing policy guidelines will, in RIC’s view, enable the Commission to more effectively determine whether modifications of the goals or Strategic Plan are warranted at this time.

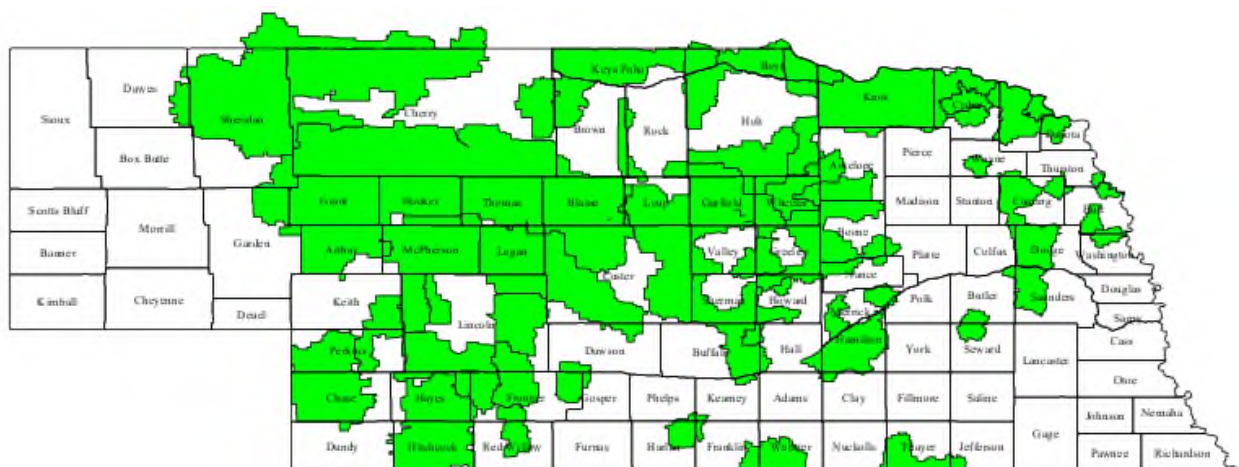
II. RIC’S RESPONSES TO THE COMMISSION’S SECTION II.B REQUESTS FOR COMMENTS

The Commission solicits general comments on appropriate revisions and updates to its strategic plan relative to broadband funding, maintenance of reliable and affordable voice and broadband services, and oversight.

A. The RIC member companies’ deployment and maintenance of telecommunications and broadband services to sparsely populated, high cost service areas of Nebraska uniquely qualify RIC to provide these Comments.

⁵ *Neb. Rev. Stat.* § 86-331(2)(b) which became law on May 27, 2023, directs the NBO to develop a strategic plan that maximizes the use of public and private resources and encourages innovative models for ownership of infrastructure that is used for both private and public purposes [to deploy broadband infrastructure and services]”. Thus, although this suggested coordination with the NBO was not relevant when the Strategic Plan was announced in 2016 and has subsequently been implemented by the Commission, RIC believes that coordination between the Commission and the NBO is and will in the future continue to be an important aspect of broadband deployment and sustainability for all Nebraskans.

As a preliminary matter, the RIC members believe that they are uniquely situated to provide these Comments regarding the High Cost Program, its goals and the Strategic Plan based on their current and long-standing provision of telecommunications and broadband services to customers located in some of the least densely populated areas of Nebraska that involve the highest costs to deploy and maintain such services. To illustrate this point, in aggregate, the thirteen RIC member companies provide telecommunications and broadband services to 39% of Nebraska's land area (29,950 of Nebraska's 77,220 total square miles). Within this area the RIC members serve 38,868 access lines or an average of 1.3 access lines per square mile served.⁶ The following map depicts the study areas of the thirteen RIC members.



4The RIC member companies' service areas contain 93 villages (municipalities with not less than 100 nor more than 800 inhabitants)⁷ and 22 cities of the second class (municipalities

⁶ See Nebraska Public Service Commission 2023 Annual Report to the Legislature at 38-41.

⁷ Definition of "villages" in *Neb. Rev. Stat.* § 17-201.

with more than 800 and not more than 5,000 inhabitants)⁸ based upon the 2020 Census. Given the rurality of these areas and the fact that such a large area of the State is served by the RIC members, the group’s policy positions deserve particular weight since provision of services to residents and businesses located in these areas is the reason that universal service principles and programs exist.

B. The Commission’s existing goals that underpin the Strategic Plan remain relevant and should continue.

The Commission’s current Strategic Plan identifies the following existing goals: Provision of ubiquitous broadband; preserve and advance affordable voice service; deploy fiber-based networks everywhere; require accountability for Program support; maintain stability of the Program; and establish a time frame for implementation. While the passage of seven years since the foregoing goals were identified may be cause for modifications to some of these goals, RIC believes that each goal remains relevant today.

As quoted by the Commission in its *2017 NUSF-100 Order*, *Neb. Rev. Stat. § 86-323(2)* of the Nebraska statutes provides that “access to advanced telecommunications and information services should be provided in *all* regions of the state.”⁹ (emphasis in original) Not only is the goal of providing ubiquitous broadband access consistent with Nebraska law, but further, it is consistent with federal law.¹⁰

⁸ Definition of “second class cities” in *Neb. Rev. Stat. § 17-101*.

⁹ *2017 NUSF-100 Order* at 19.

¹⁰ See, *In the Matter of Report on the Future of the Universal Service Fund*, WC Docket No. 21-476 at paras. 11-12 (Aug. 15, 2022) (the “*FCC USF Report*”).

Availability of affordable voice service continues to be a requirement of Nebraska law¹¹ and should continue to be a Commission goal. As further discussed below, this goal should be explicitly enlarged to include availability of affordable *broadband* service consistent with Nebraska and federal law.¹²

In the *2017 NUSF-100 Order* the Commission reaffirmed its conclusion in the Strategic Plan “to provide NUSF support for scalable broadband networks” based upon deployment of “resilient” technology in rural high-cost areas.¹³ Since 2016, Internet access speeds required to be supported by broadband networks have moved from 4/1 Mbps to 10/1 Mbps to 25/3 Mbps to 100/20 Mbps and currently in Nebraska to 100/100 Mbps.¹⁴ With regard to the provision of broadband services to the State’s libraries, the Legislature has specifically provided that Nebraska’s E-Rate Special Construction Matching Fund Program shall “provide incentives for fiber optic cable to be constructed to benefit public libraries”¹⁵ to support gigabit Internet access service. The past evolution of broadband speeds as well as the Legislature’s explicit policy favoring fiber-based broadband service to libraries support the Commission’s goal to provide fiber-based networks ubiquitously in the State.¹⁶

¹¹ See *Neb. Rev. Stat.* § 86-323(1).

¹² See *id.* and *FCC USF Report* at paras. 11 and 12.

¹³ See *2017 NUSF-100 Order* at 18.

¹⁴ *Neb. Rev. Stat.* § 86-324.01.

¹⁵ *Neb. Rev. Stat.* § 86-332(1).

¹⁶ Federal Communications Commission (“FCC”) policy also supports the use of federal universal service support to fund scalable, future-proof networks. See, *In the Matter of Connect America Fund, et al., Report and Order*, WC Docket No. 10-90, *et al.*, FCC 14-190, released December 18, 2014 at para. 18 (“We encourage recipients of funding to deploy to the extent possible future proof infrastructure that will be capable of meeting evolving broadband performance obligations over the longer term. That will ensure that our policies will continue to

Accountability for the use of Nebraska and federal support for broadband deployment and ongoing expenses of operating broadband-capable networks has become an increasingly complex task in light of the proliferation of support programs since the Commission's original publication of its Strategic Plan goals.¹⁷ The Commission has responded by creation of a process by which a recipient of broadband deployment support submits a request to the Commission for support prior to project deployment and submits documentation of costs of deployment after project completion.¹⁸ In addition, the Commission has limited permitted expenses, monitors cost allocation and affiliate transactions and has reduced the prescribed rate of return for rate-of-return carriers.¹⁹ Further, the Commission has established detailed speed testing requirements to assure that completed broadband projects deliver speeds consistent with project specifications.²⁰

support an evolving level of universal service in the future.”). The NTIA's Notice of Funding Opportunity clearly preferences fiber-optic technology and in fact defines “Priority Broadband Project” to mean “a project that will provision service via end-to-end fiber-optic facilities to each end-user premises.” *See* Department of Commerce, National Telecommunications and Information Administration, Broadband Equity, Access, and Deployment Program Notice of Funding Opportunity (“NOFO”) at 14 and fn. 9 (May 13, 2022), <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

¹⁷ Volume 1 of the NBO's Initial Proposal to the National Telecommunications and Information Agency (“NTIA”) at 3-4 identifies 22 separate federal or state broadband funding programs providing total funding of slightly less than \$2 billion in the State of Nebraska. Some of these programs are administered by the Commission and others are administered by other state or federal departments or agencies.

¹⁸ *In the Matter of the Nebraska Public Service Commission, on its own Motion, to make adjustments to its high-cost distribution mechanism and make revisions to its reporting requirements*, Application No. NUSF-108, Progression Order No. 3, Findings and Conclusions at 41 (Nov. 19, 2018). The Commission is investigating possible modifications to this process in the *NUSF-139 Order*, Section II.A.

¹⁹ *Id.* Application No. NUSF-108, Progression Order No. 5, Order at 12-14 (Feb. 23, 2021).

²⁰ *In the Matter of the Nebraska Public Service Commission, on its own motion, to implement standards for the verification of broadband service provider coverage and speed data*, Application No. NUSF-133, Order Setting Speed Test Requirements (Nov. 8, 2022).

Adoption of the foregoing measures confirms the Commission's commitment to the accountability goal and the continuing relevance of this goal.²¹

RIC believes that since April 1, 2019, when the Commission implemented reform of the NUSF contribution mechanism to a connections-based assessment, the Commission has generally accomplished the goal of stabilizing the level of surcharge collections that support NUSF programs, in particular the High Cost Program.²² This stability of the NUSF stands in contrast to federal universal service programs for which the percentage applied to assessable revenues continues to climb and the assessment base continues to shrink,²³ with no realistic end to these trends in sight without action by Congress or the FCC to broaden the assessment base.

The foregoing review of the 2016 goals demonstrates the significant progress that the Commission has made toward accomplishment of these goals. Nonetheless, RIC believes that these goals remain relevant and require ongoing focus by the Commission. For example, the Commission should fully explore the adequacy of federal universal service support plus

²¹ The Commission and interested parties will more closely examine existing reporting and accountability requirements and possible revisions thereof in connection with Task 7, "Streamlining the Accountability Framework" of Section II.C of the *NUSF-139 Order*.

²² *In the Matter of the Nebraska Public Service Commission, on its own motion, to determine a rate design and address implementation issues with a connections-based contribution mechanism*, Application No. NUSF-111/PI-211, Order (Aug. 7, 2018). Assessment of residential connections was expanded to include business connections *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider revisions to the contribution methodology and determine a rate design for services currently subject to a revenues-based surcharge*, Application No. NUSF-119/PI-233, Order (May 11, 2021).

²³ See *FCC USF Report* at para. 111 wherein the FCC states: "we recommend Congress provide the Commission with the legislative tools needed to make changes to the contributions methodology and base in order to reduce the financial burden on consumers, to provide additional certainty for entities that will be required to make contributions, and to sustain the Fund and its programs over the long term."

customer revenues to offset the ongoing expense costs of provisioning, maintaining and upgrading networks providing telecommunications and broadband services.²⁴ The Commission should fully explore comparability of rates and services in rural areas of the State and urban areas of the State.²⁵ And the Commission should focus on affordability of telecommunications and broadband services.²⁶ As more fully discussed below, RIC believes that sustainability of the broadband networks and cybersecurity for such networks should be added as goals in connection with the Commission's updated Strategic Plan.²⁷

The Commission has previously considered a goal of affordability and standards by which that should be measured. Should the Commission revise its strategic plan relative to universal service funding to include a goal of affordable broadband service? Why or why not?

The Commission should collaborate with other State and Federal agencies in its efforts to promote affordable broadband services.

Affordability of telecommunications services has been the focus of several federal and state programs for many years. More recently, affordability of broadband services has been become an additional focus of federal and state policymakers – and properly so. It is RIC's understanding that the Nebraska Office of the Chief Information Officer (the "OCIO") has been assigned the responsibility to develop a Nebraska State Digital Equity and Inclusion Plan (the "DEI Plan"). The OCIO's digital equity efforts are focusing on affordable access to service, access to internet-enabled devices, and digital literacy. The DEI Plan will support digital equity

²⁴ RIC will provide expanded analysis and comments on these subjects in its comments to be filed in response to the *NUSF-139 Order*, Section II.C, Tasks 1, 2 and 6.

²⁵ RIC will provide expanded analysis and comments on these subjects in its comments to be filed in response to the *NUSF-139 Order*, Section II.C, Tasks 4 and 5.

²⁶ RIC will provide expanded analysis and comments on this subject in its comments to be filed in response to the *NUSF-139 Order*, Section II.C, Task 5.

²⁷ Please refer to the discussion of these proposed goals at pages 12-15 *infra*.

strategies. In order to minimize duplication of efforts regarding DEI and broadband affordability, it seems reasonable that the Commission would coordinate its efforts in this area with those of the OCIO.

Activities that RIC proposes the Commission might consider to pursue such affordability goals include:

- Increase enrollment in the FCC’s Affordable Connectivity Program and Lifeline Program by increasing awareness and decreasing barriers.
- Encourage providers currently not participating in the Affordable Connectivity Program to participate.
- Partner with broadband providers to advance digital inclusion efforts targeting low-income households with training, device refurbishment programs or other programs included in the State Digital Equity Plan.
- Incentivize providers to offer low-cost and affordable service options as an evaluation criterion for broadband grant funding.
- Support continued funding for the Affordable Connectivity Program.
- Support legislation to amend the provisions of the Nebraska Telephone Assistance Program (“NTAP”) to expressly include broadband services.²⁸

Additionally, first among the universal service legislative policies in Neb. Rev. Stat. § 86-323 is the statement that quality telecommunications and information services should be available at just, reasonable, and affordable rates. (Emphasis added) (footnote omitted) Should the Commission update this goal in a manner to specifically ensure a certain level of quality access to broadband and telecommunications services is being provided? If so, please describe how this goal should be updated?

Actions by the Commission have in the past and continue to support and require the provision of quality telecommunications and broadband services in the State of Nebraska.

²⁸ *Neb. Rev. Stat. § 86-329(1)* currently provides that “[s]upport provided by the program shall be specifically targeted to maintain affordable rates for residential basic local exchange services supported by federal and state universal service mechanisms.” This limiting language casts doubt on the permissible use of NTAP support for broadband services affordability. Amending this statute to expressly include broadband services would facilitate the use of NTAP to support affordable broadband services.

Consistent with the requirements of Section 86-323, RIC supports efforts by the Commission to ensure access to quality broadband and telecommunications services. Commencing January 1, 2022, any High Cost Program support provided for new broadband infrastructure is required to support broadband service scalable to 100/100 Mbps.²⁹ As is well known, this speed standard exceeds the most recently adopted federal standard of 100/20 Mbps. The Commission has implemented the scalable 100/100 Mbps standard in its administration of the High Cost Program and thus, is *de facto* ensuring provision of quality access to broadband service in Nebraska. As discussed above in connection with the accountability goal of the Strategic Plan, not only has the Commission implemented the 100/100 Mbps standard, but it has also implemented a detailed testing plan to assure that broadband deployment projects in Nebraska actually deliver these speeds.³⁰

Regarding the provision of quality *telecommunications* services in Nebraska, the Commission's Telecommunications Rules and Regulations contain provisions establishing quality standards for local exchange and interexchange telecommunication services.³¹ RIC believes that the Commission's ongoing administration of the High Cost Program includes actions responsive to the policies set forth in section 86-323 that have evolved in response to continuing developments in the provision of broadband and telecommunications services to consumers in all regions of the State.

Even though the FCC did not adopt these goals [related to reliability, sustainability, adaptability and cybersecurity], are these goals the Commission should explicitly consider and adopt? (footnote omitted) For example, even though sustainability is not specifically listed among the Legislative goals above, this large infusion of federal grant funding for broadband

²⁹ Neb. Rev. Stat. § 86-324.01.

³⁰ See footnote 20 *supra*.

³¹ See generally Title 291 Neb. Admin. Code, Chap. 5, sections 002 and 003.

infrastructure was not a foreseeable event at the time the Legislation was enacted. Should the goal of sustainability be added among the Commission's universal service fund goals? Why or why not?

RIC supports the Commission's consideration and adoption of a universal service goal that explicitly addresses network sustainability.

Initially, to address the subject of sustainability of the network that supports access to broadband services, 47 U.S.C. § 254(e) provides that federal universal service support shall be used “only for the provision, maintenance and upgrading of facilities and services for which the support is intended.” *Neb. Rev. Stat.* § 86-317 states that the purpose of the Nebraska Telecommunications Universal Service Fund Act “is to authorize the commission to establish a funding mechanism which supplements federal universal service support mechanisms.” Consistent with federal requirements, *Neb. Rev. Stat.* § 86-324(1) specifies that NUSF support shall be used “only for the provision, maintenance and upgrading of facilities and services for which the support is intended.” These statutory sections are not time-limited and therefore logically reflect the notion that sustaining universal service is a mandated and continuing goal.

This conclusion is further supported by *Neb. Rev. Stat.* §86-323. This statute not only states the overall purposes of the NUSF, but further, authorizes the Commission to administer the program such that the “distribution of universal service funds should encourage the *continued development and maintenance of telecommunications infrastructure.*”³² This “continued development and maintenance of telecommunications infrastructure” is not limited to a specific period of time. In the *FCC NOI* the FCC expresses its concern for continuing operation of networks stating: “[P]roviders in high-cost areas that already operate such fully deployed networks might not have a business case for continuing to operate those networks and provide

³² *Neb. Rev. Stat.* §86-323 (emphasis added).

services absent ongoing programmatic support that will augment existing revenues.”³³ Thus, RIC respectfully submits, that the continuation of universal service is an ongoing goal fully consistent with the federal and state concept of “sustainability” of such networks.

In fact, the Commission itself recognizes the long-term necessity of universal service support. In its recent comment submission to the FCC, the Commission stated:

[T]he NPSC recommends the Commission [FCC] keep in mind that Congress’ statutory universal service mission is not focused solely on upgrading networks in unserved areas but rather upgrading, maintaining, and continuing to provide comparable services at comparable rates. Consistent with § 254, the Commission [FCC] should ensure that universal funding for networks deployed by ROR carriers through the use of private capital, universal service support, or grant-based funding is sustainable and sufficient so that prices for comparable services in rural areas can remain affordable. (footnotes omitted)³⁴

The foregoing recommendations by this Commission to the FCC are equally applicable to the administration of the High Cost Program consistent with the requirements of *Neb. Rev. Stat.* § 86-324(1).

Deployment of new broadband infrastructure will continue but at a reduced pace as additional deployment is accomplished. At that time, and consistent with Nebraska and federal law as discussed above, RIC respectfully submits that the Commission should place increased emphasis on the ongoing expenses of operating such networks. The High Cost Program should be modified as appropriate to shift a greater proportion of overall universal service support to ongoing expenses associated with the maintenance and upgrading of broadband networks. In

³³ *Connect America Fund, et al.*, Notice of Inquiry, WC Docket Nos. 10-90, 14-58, 09-197, 16-271, RM-11868, FCC23-60 at para. 159 (rel. July 24, 2023) (the “*FCC NOI*”).

³⁴ *Connect America Fund, et al.*, Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, WC Docket Nos. 10-90, 14-58, 09-197, 16-271, RM-11868, FCC23-60 (rel. July 24, 2023) (“*Enhanced A-CAM Order*”) Comments of the Nebraska Public Service Commission at 7 (Sept. 18, 2023).

doing so the Commission will, in a manner fully consistent with state law and federal law, advance the sustainability of broadband networks.³⁵

Cybersecurity of telecommunications and broadband networks has been of critical importance to the public interest of Nebraskans and will be even more so in the future as cybersecurity threats continue or even worsen.

Cybersecurity of telecommunications and broadband networks has emerged as a key policy issue that merits inclusion as a goal in the Strategic Plan. As evidence of State policymakers' cybersecurity concerns, on February 22, 2023 Governor Pillen issued Executive Order No. 23-05 prohibiting award of any grant funding designated for broadband deployment in Nebraska to companies using or deploying communications equipment or services provided by organizations listed on the FCC's "Covered List."³⁶ Further, LB 683 which became effective on May 27, 2023 contains reporting requirements and directs withholding of NUSF support to any company using equipment or services on the "Covered List."³⁷

³⁵ Recent comment filings on or about October 23, 2023 by interested parties in response to the Notice of Inquiry included in the FCC's *Enhanced A-CAM Order* are instructive and provide insights on this subject. For example, the Vantage Point Solutions' *FCC NOI Comments* state: "All successfully deployed infrastructure requires ongoing operating support. Support to help recover the costs of deploying and **maintaining** networks and delivering an evolving level of services over these networks at affordable rates will be essential to achieve the mission of universal service not only today but for years to come." (emphasis in original) Vantage Point Solutions Comments at 3 (Oct. 23, 2023).

³⁶ See *In the Matter of the Nebraska Public Service Commission, on its own motion, to require certificated local exchange carriers, interexchange carriers, and eligible telecommunications carriers in Nebraska to attest as to whether they are using communications equipment prohibited by the Federal Communications Commission*, Application No. C-5493/PI-245, Order Opening Docket at 1 (March 28, 2023).

³⁷ The applicable sections of LB 683 have been codified as *Neb. Rev. Stat.* §§ 86-125(4)(c) and 86-324(2)(d).

An example of the importance of cybersecurity at the federal level is the attention to this subject in the NOFO issued in connection with the BEAD Program.³⁸ Therein, “NTIA recognizes the importance of (a) protecting American communications networks and those who use them from domestic and international threat actors, and (b) promoting the natural evolution of cybersecurity and supply-chain risk management practices in a manner that allows flexibility in addressing evolving threats.”³⁹

A further example of the focus on cybersecurity at the federal level is found in the *Enhanced A-CAM Order* wherein the FCC states: “We require Enhanced A-CAM carriers to implement operational cybersecurity and supply chain risk management plans by January 1, 2024 . . . Our actions emphasize the critical importance of cybersecurity consistent with broader initiatives across the federal government . . .”⁴⁰

Cybersecurity threats and the serious concerns relating thereto will not soon disappear. Therefore, RIC recommends that the Commission add a goal to the Strategic Plan to “Effectively Address and Manage Cybersecurity Threats.” In doing so, the Commission should consider making supplemental funding available from the High Cost Program to assist companies in “cybersecurity-proofing” their networks and systems.

Are there any additional goals the Commission should consider? Please explain.

RIC has no additional goals to recommend to the Commission at this time.

³⁸ See NOFO at 70-71.

³⁹ *Id.* at 70.


⁴⁰ See *Enhanced A-CAM Order* at para. 109.

III. CONCLUSION

As stated above, the Nebraska Rural Independent Companies appreciate the opportunity to provide these Comments in response to Section II.B of the *NUSF-139 Order*. RIC looks forward to further participation in this proceeding.


Dated: November 17, 2023.

Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Great Plains Communications, LLC., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Sodtown Communications, Inc. and Three River Telco (the “Rural Independent Companies”)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of November 2023, an electronic copy of the foregoing pleading was delivered to the Nebraska Public Service Commission at psc.nusf@nebraska.gov and was served electronically on the parties to this proceeding.


Paul M. Schudel

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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**SECTION II.C, TASKS 1, 2 AND 6 COMMENTS OF THE
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The Nebraska Rural Independent Companies (“RIC”)¹ submit these Comments in response to the Order Opening Docket, Seeking Comment and Setting Hearing entered by the Nebraska Public Service Commission (the “Commission”) in this matter on August 29, 2023.² The responses set forth below are limited to the issues presented by the Commission in Section II.C, Tasks 1, 2 and 6 of the *NUSF-139 Order*.³

I. INTRODUCTION

On September 29, 2023, RIC filed Comments in response to the Commission’s inquiries set forth in Section II.A of the *NUSF-139 Order*, and on October 24, 2023, RIC’s witness, Dan

¹ Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Great Plains Communications, LLC, Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Sodtown Communications, Inc., and Three River Telco.

² *In the Matter of the Nebraska Public Service Commission, on its own motion, to consider appropriate modifications to the high-cost distribution and reporting mechanisms in its Universal Service Fund program in light of federal and state infrastructure grants*, Application No. NUSF-139, Order Opening Docket, Seeking Comment and Setting Hearing (Aug.29, 2023) (the “*NUSF-139 Order*”).

³ The comment deadline for the *NUSF-139 Order* Section II.C, Tasks 1 through 7 was bifurcated by the Hearing Officer’s Order Bifurcating Schedule for Comments and Extending Comment Deadline in Part entered October 12, 2023.

Davis, presented testimony to the Commission regarding Section II.A inquiries. Today, RIC is separately filing Comments in response to the Commission’s inquiries set forth in Section II.B of the *NUSF-139 Order* that address the Commission’s Strategic Plan and goals for the Nebraska Universal Service Fund High Cost Program (the “High Cost Program”) that were established in 2016. The instant Comments separately address the Commission’s inquiries set forth in Section II.C, Tasks 1, 2 and 6 of the *NUSF-139 Order*. If and when the Commission provides for the filing of reply comments or post-hearing comments or schedules further hearings on any aspects of the *NUSF-139 Order*, RIC intends to fully participate in any such filings or hearings.

In the below Comments, RIC will first set forth the topic or question in response to which comments are requested in the *NUSF-139 Order* followed by RIC’s responsive comments. RIC appreciates the opportunity to provide these Comments to the Commission and to participate in this important docket regarding the long-term future of the High Cost Program.

II. POLICY GUIDELINES

The “Policy Guidelines” set forth in RIC’s Comments filed on November 17, 2023 in response to Section II.B are equally applicable to the following comments on Section II.C, Tasks 3, 4, 5 and 7. RIC incorporates the discussion of the “Policy Guidelines” as found in such previously filed Section II.B Comments as if fully set forth herein.

III. RIC’S RESPONSES TO THE COMMISSION’S SECTION II.C, TASKS 1, 2 AND 6 REQUESTS FOR COMMENTS⁴

⁴ RIC respectfully recommends that with regard to Tasks 1 and 2 and all of the Commission’s inquiries included in Tasks 1 and 2, the Commission should closely monitor the Federal Communications Commission’s (“FCC”) actions and comment filings by interested parties relating to *Connect America Fund, et al.*, Notice of Inquiry, WC Docket Nos. 10-90, 14-58, 09-197, 16-271, RM-11868, FCC23-60 (rel. July 24, 2023) (the “*FCC NOI*”). As the Commission is aware, the *FCC NOI* “seeks to build a record to help the Commission explore methods to ensure universally affordable and available fixed broadband services into the future. . .” *Id.* at para. 154.

Task 1 – Incentivization of New Broadband Investment

We seek comment on how to revise the Commission’s high-cost distribution mechanism to incentivize continued investment in areas where broadband infrastructure has been and will be deployed.

Multiple federal support programs such as the FCC’s Enhanced Alternative Connect America Cost Model Program (“E-ACAM”), the Rural Utilities Service ReConnect Program, and the National Telecommunications and Information Administration’s Broadband Equity, Access, and Deployment (“BEAD”) Program exist to fund construction of networks to provide at least 100/20 Mbps broadband service to currently unserved or underserved locations. These federal programs are supplemented by the Nebraska Broadband Bridge Act Program (NBBP) and the High Cost Program. It is currently unknown whether, in aggregate, these programs will be sufficient to accomplish the goal of providing all Nebraskans with access to broadband service at 100/20 Mbps or greater speeds. However, to the extent that locations remain unserved following deployment of broadband supported by these programs, it can reasonably be predicted that such unserved locations will be remote, very sparsely populated and very high cost (“ultra high cost locations”) and thus are uneconomical for build out by grant recipients or bidders for support in reverse auctions. The Commission and parties are well aware of the lack of success with the August 2022 reverse auction of withheld and withdrawn High Cost Program support.⁵

In order to incentivize broadband providers to deploy networks to serve the “ultra high cost locations”, RIC submits that at least three requirements must be met by any High Cost Program modifications. First, sufficient state or federal support must be provided to cover the

⁵ RIC notes, however, that on November 8, 2023, the Commission released a detailed order that revises reverse auction procedures and establishes a 2024 reverse auction schedule. *See In the Matter of the Nebraska Public Service Commission, on its own motion, to establish reverse auction procedures and requirements*, Application No. NUSF-131, Progression Order No. 2 (Nov. 8, 2023) (the “NUSF-131 Order”).

material, labor and related costs to construct broadband facilities to provide access to broadband services at these locations. Second, the broadband provider that accepts build out support in return for a build out commitment must be assured that predictable and sufficient support will be provided that, together with anticipated customer revenues, will at a minimum recover long-run incremental ongoing expenses for maintaining and upgrading broadband service to these “ultra high cost locations.” Third, it is also appropriate that companies incurring these capital and operating expenses in otherwise uneconomic areas have the opportunity to earn a reasonable return on their investments.

Identifiable sources of state funding available for distribution by the Commission for deployment of broadband services to “ultra high cost locations” currently are future NBBP grants, withdrawn or withheld High Cost Program allocations or distributions originally made to price cap carriers, and future High Cost Program distributions that may be made. Assuming continuing funding by the Legislature for the NBBP, the Commission could identify project areas for which it believes that funding should be used to establish broadband service to unserved “ultra high cost locations” and seek applications from broadband providers to compete for such funding. Similarly, the Commission could create project areas consisting of “ultra high cost locations” for which it seeks reverse auction bids for withdrawn or withheld High Cost Program distributions.⁶

In addition, the Commission will likely need to make necessary adjustments to the current High Cost Program in order to provide sufficient and predictable ongoing expense

⁶ See RIC’s responses to Commission questions regarding reverse auctions at 5-8 below.

support for the high cost locations, once facilities to serve such locations are built.⁷ Any such adjustments should be made on the basis of the “Policy Guidelines” identified by RIC in its Comments filed in response to Section II.B of the *NUSF-139 Order*.⁸ Further, RIC suggests that the following points should be considered by the Commission in connection with any adjustments to the current High Cost Program:

1. Ongoing expense High Cost Program support should only be provided to Nebraska Eligible Telecommunication Carriers (“NETCs”).
2. Ongoing expense High Cost Program support should be provided only for future-proof networks that can deliver 100/20 Mbps or greater speeds with appropriate network upgrades, and that are scalable to speeds that will be necessary in the future to meet expanding customer demands.⁹
3. Recipients of ongoing expense High Cost Program support should be required to serve all locations within the service area for which support is received.
4. Recipients of ongoing expense High Cost Program support should be subject to quality of service requirements.
5. Rates charged by these recipients should be comparable to urban rates or the rates used to calculate support, as applicable.
6. Stand alone voice service should continue to be required as a condition for receipt of support.

We seek comment on ways to allocate funding in the future, including whether to utilize reverse auctions and rural-based community plans. We seek comment on how these mechanisms should be incorporated into the Commission’s high-cost distribution mechanism. Will these funding mechanisms remain relevant? Are there other incentive-based methods for allocating funding which would be more effective and efficient?

⁷ See responses to Task 2 questions at 14-19 below for a more complete discussion of this subject.

⁸ See RIC Comments filed in response to the *NUSF-139 Order*, Section II.B at 2-3 (Nov. 17, 2023).

⁹ It should be noted that on November 1, 2023 the FCC released its Seventeenth Section 706 Notice of Inquiry *In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 22-270 seeking comments on revised benchmarks for advanced telecommunications capability and universal service goals for broadband.

RIC respectfully submits that the experiences of the past five years regarding implementation of High Cost Program reverse auctions and rural-based community plans demonstrate the challenges associated with fashioning a framework that advances the deployment of broadband in a manner consistent with the High Cost Program's goal of deploying and operating ubiquitous broadband networks throughout rural Nebraska. While the Commission may be able to address some of these challenges when the final order in the NUSF-131 docket is released,¹⁰ based on intervening federal actions, RIC submits that it would not be advisable to expand the use of reverse auctions (or rural-based community plans) for incorporation into the Commission's High Cost Program distribution mechanism.

Neb. Rev. Stat. § 86-330 specifies the limited purposes for the use of reverse auctions and rural-based plans to redirect withdrawn or withheld High Cost Program support to the exchange area for which the support was originally distributed. Currently, the aggregate amount of such withdrawn or withheld support is nearly \$22 million based on NUSF Director Cullen Robbins' testimony presented at the hearing of Application No. NUSF-131.¹¹ Such amount was originally distributed to exchange areas operated by price cap carriers Citizens Telecommunications Company of Nebraska and Windstream Nebraska, Inc. While the Commission has undertaken considerable efforts to implement the directives found in Section 86-330,¹² questions still exist,

¹⁰ See *In the Matter of the Nebraska Public Service Commission, on its own motion, to establish reverse auction procedures and requirements*, Application No. NUSF-131, Progression Order No. 1, Order Seeking Comment (Mar. 14, 2023) (the "*NUSF-131 Order*") in which the Commission posed a series of questions regarding improvements to the reverse auction process. Comments and reply comments were filed and a public hearing was held on August 2, 2023.

¹¹ See *NUSF-131 Order* at 3 and 5.

¹² Reverse auctions have been a part of legislative and Commission policy discussions relating to the NUSF since 2018 with the passage of LB 994 and, since 2021 with the addition of Section 86-330(6) arising from LB 388 that allows for redirection of withdrawn NUSF support through

based on the outcome of the 2022 reverse auction,¹³ as to the results that can be reasonably expected to be achieved through continued reliance on reverse auctions or rural community-based plans.¹⁴

RIC respectfully submits that intervening federal actions have called into question any possible continued or expanded application of a reverse auction framework. The challenges in delivering the anticipated benefits of Phase I of the Federal Communications Commission's

the use of rural-based community plans in addition to reverse auctions. The Commission's significant efforts to try to implement these directives through public input and comment are a matter of record. *See In the Matter of the Commission, on its own motion, seeking to amend Title 291, Chapter 16, to adopt Reverse Auction and Wireless Registry rules and regulations in accordance with Nebraska Legislative Bill 994 (2018)*, Rule and Regulation No. 202, Order Opening Docket (Mar. 12, 2019) and *id.*, Order Issuing Amended Certificate of Adoption (Nov. 4, 2020) (modification of initial rules based the review of the Attorney General that eliminated the sections of these rules relating to community-based redirection of support); *see also In the Matter of the Commission, on its own motion, seeking to amend Title 291, Chapter 16, Reverse Auction and Wireless Registry rules and regulations in accordance with Nebraska Legislative Bill 338 (2021)* and *Id.*, Order Adopting Third Set of Proposed Rules and Issuing Certificate of Adoption (Aug. 29, 2023).

¹³ In parallel with the foregoing referenced rulemaking proceedings, the Commission, on its own motion, opened Application No. NUSF-131. *See In the Matter of the Nebraska Public Service Commission, on its own motion, to establish reverse auction procedures and requirements*, Application No. NUSF-131, Order Opening Docket, Seeking Comment and Setting Hearing (June 29, 2021). The 2022 NUSF reverse auction (*see id.*, Order Establishing Reverse Auction Procedures and Scheduling Workshop (Feb. 1, 2022) and Order Issuing Reverse Auction Schedule and Procedures (June 28, 2022)). However, this reverse auction resulted in submission of only one bid awarded (\$22,814.50 out of a budget for such auction that totaled \$13,092,254.00).

¹⁴ More specifically, the Commission issued the *NUSF-131 Order* in response to which interested parties suggested significant modifications to NUSF reverse auction procedures including reduction of the geographical area of minimum bidding units ("MBUs"), constituting MBUs as contiguous areas, increasing MBUs reserve prices through adjustments to model-based costs, and resolving the issue as to whether successful reverse auction bidders will receive NUSF ongoing expense support for locations in the MBU in return for acceptance of carrier of last resort obligations for such locations. *See, id.*, Comments and Reply Comments of the Nebraska Rural Independent Companies dated April 14, 2023 and May 5, 2023, respectively.

(“FCC”) Rural Digital Opportunity Fund (“RDOF”)¹⁵ and the federal government’s near-term implementation of BEAD¹⁶ will surely provide further guidance to the Commission as to how such programs and frameworks can and should be structured. This learning, in turn, may assist the Commission in its effort to successfully implement the requirements of Section 86-330. However, information is not currently available that supports expanded use of a reverse auction/rural community-based framework in connection with distribution of High Cost Program support. Therefore, RIC respectfully suggests that no rational basis exists to support use of reverse auctions or rural-based community plans as possible replacements or augmentations to the existing High Cost Program distribution mechanism.

The Commission seeks comment on the appropriate process for making updates to the State Broadband Cost Model (“SBCM”) to account for a more current estimate of costs incurred to deploy broadband infrastructure in today’s environment. Should costs in the cost model be adjusted with time based on inflation. If so, what price index should be used?

As the Commission and the industry are surely aware, inflation has had a significant impact in recent years on telecommunications and all businesses. Inflation is particularly difficult for firms such as the RIC members that operate in very rural areas that present limited opportunities to recover inflationary costs from small numbers of customers. RIC has previously advocated that the Commission should incorporate an inflation factor in the calculation of High

¹⁵ <https://communitynets.org/content/worries-mount-rural-digital-opportunity-fund-default-money-will-be-wasted> (last visited October 9, 2023).

¹⁶ The Commission is well aware of the magnitude of federal dollars available for unserved and underserved locations within the rural areas of the country. A portion of these monies allocated to the State of Nebraska for BEAD (approximately \$405.28 million) will be available for applications in Nebraska price cap carriers’ rural areas, the very areas that, in RIC’s opinion, raised the need for LB 994 and reverse auctions in the first instance.

Cost Program support.¹⁷ In the *NUSF-131 Order* the Commission finds that it is appropriate to increase reserve prices for minimum bidding units in the 2024 reverse auction by a factor of 2.5 times the modeled costs provided by the SBCM.¹⁸ This finding is in response to evidence in the record relating to the effects of inflation and general increases in costs of labor and materials necessary to construct broadband networks.

The RIC members recommend that an inflation factor should be used to adjust SBCM cost data each year to more accurately reflect cost trends and actual costs of labor and materials that occur due to inflation.¹⁹ One inflation index that could be used and is currently used by the Universal Service Administrative Company (“USAC”) for various federal high-cost programs, is the GDP-CPI index. Use of this index is appropriate, as it is widely accepted as a measurement of inflationary costs for businesses and consumers in the nation.

The A-CAM model was based upon a modified version of the model previously used to extend an offer of Connect America Cost Model (“CACM”) model-based support to the price cap companies in 2015. The cost module for CACM was finalized in 2014. Notably, the operating expense inputs to the CACM model were derived from, among other things, NECA data from 2006-2010 and ARMIS data from 2007 and 2010.²⁰ Arguably, the CACM cost module was already out-of-date at the time it was finalized for use in extending an offer of

¹⁷ See *NUSF-131 Order* at 4 citing testimony supporting adoption of an inflation factor in setting reserve prices for Minimum Bidding Units in reverse auctions.

¹⁸ *Id.* at 6.

¹⁹ As suggested in footnote 4 above, the Commission should closely monitor the progress of the *FCC NOI* as it considers modifications to the Connect America Cost Model (“CACM”) on which the SBCM is based.

²⁰ See, CACM, Model Methodology, CACM Version 2.4.0, Document version 2.4.0, Revised 05/01/2018, page 29.

universal service support to ACAM I companies. The annual amount of support that was calculated pursuant to CACM in 2017 is the amount that ACAM-electing companies have been receiving annually for the past six years.²¹ While the original CACM should have included a price index variable to account for changes in prices, the low rate of inflation in years 2018 through 2020 reduced the impact of the absence of this variable. However, the current inflationary environment that began in 2021 emphasizes the need to implement a price index variable in connection with the High Cost Program that should have commenced in 2022, but certainly needs to commence for 2024.²²

The FCC has adopted an inflation adjustment in support programs such as E-Rate, Rural Health Care, and high-cost loop support. The FCC has chosen to apply the GDP-CPI factor to the annual budget for these programs. In the context of the E-Rate program, the FCC stated that indexing the E-rate cap to inflation “is a sensible approach to gradually aligning the support provided by E-rate with the needs of schools and libraries.” The FCC further noted that “[i]ndexing the cap to inflation will ensure that the program maintains its current purchasing power in today’s dollars . . .”²³ Further, regarding the legacy high-cost loop support program,

²¹ Since 2017, the Commission has made annual inflation adjustments for the E-Rate, Rural Health Care and the high-cost loop support programs as follows: Payment year (PY) 2018 1.8%; PY 2019 2.2%; PY 2020 1.8%; PY 2021 1.2%; and PY 2022 4.2%. Annual FCC inflation adjustment factor announcements are found at: <https://www.usac.org/rural-health-care/additional-program-guidance/funding-year-overview/> . <https://www.fcc.gov/document/e-rate-and-rhc-programs-inflation-based-caps-funding-year-2021> <https://www.fcc.gov/document/e-rate-and-rhc-programs-inflation-based-caps-funding-year-2022>

²² Inflation-adjusted increases are typically made on a trailing year basis. For example, the FCC’s E-Rate and Rural Health Care programs’ funding caps for fund year 2022 reflect a 4.2% inflation adjustment increase from funding year 2021, calculated based upon the GDP-CPI. *See*, <https://www.fcc.gov/document/e-rate-and-rhc-programs-inflation-based-caps-funding-year-2022>.

²³ In the Matter of Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Sixth Report and Order, FCC 10-175, at ¶ 36 (rel. Sept. 28, 2010).

the FCC has adopted an inflationary escalator to increase the budget for that program based upon GDP-CPI.²⁴ RIC believes that these actions by the FCC should be instructive to the Commission and support the implementation of an inflation adjustment in connection with the High Cost Program.

Recent studies have found that inflation is disproportionately impacting people living in rural areas compared to the urban population. An analysis by the Congressional Budget Office (“CBO”) and a study prepared by Bank of America both found that rural areas have experienced higher inflation than urban areas. The CBO study found that inflation has been 30% higher in rural areas than in urban areas since the beginning of the pandemic.²⁵ The Bank of America analysis showed that spending power dropped for rural Americans by 5.2% on an annualized basis versus 3.5% for urban dwellers in 2021.²⁶ As an example of the disproportionate impact of inflation on rural areas, one RIC member reported experiencing a 37% increase in fuel cost between November 2021 and April 2022, which is particularly material given the distances that rural technicians often travel to reach customer premises. According to data from the U.S. Energy Information Administration, during the same time period the average fuel cost in the United States increased by approximately 21%.²⁷ Price increases due to inflation are not, of

²⁴ In the Matter of Connect American Fund, et al., WC Docket No. 10-90, et al. Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18-176, at ¶ 89 (rel. Dec. 13, 2018).

²⁵ <https://www.cbo.gov/system/files/2022-01/57794-Smith.pdf>

²⁶ <https://www.cbsnews.com/news/inflation-rural-households-non-college-grads-hardest/>

²⁷ https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=p&s=emm_epm0_pte_nus_dpg&f=m

course, limited to fuel. All material and labor costs associated with construction of networks to enable access to broadband services have increased.

The disproportionately harsher effects of inflation in rural areas combined with inadequate broadband services disadvantage the population and the economies of rural America. Therefore, it is crucial that both federal and state High Cost Program support be adjusted prospectively based upon GDP-CPI to compensate for the inflationary increases in the cost of building and operating the networks that serve rural populations.

Should the Commission initiate that process [seeking revised cost data from CostQuest] and release the updated version with sublicensed access similar to its process in NUSF-100?

Yes. A license from CostQuest regarding updated cost and location information included in the SBCM should be obtained for use in connection with the High Cost Program. The version of SBCM currently being used by the Commission in connection with High Cost Program distributions outputs information based on 2010 census blocks but needs to be updated to reflect 2020 census blocks.

In the alternative, the Commission seeks comment on whether it should open a broader proceeding to consider input/output cost model modifications? Should the Commission consider updated model inputs and outputs including but not limited to depreciation, useful life of equipment, and expected revenues?

Attempting to update all the cost inputs used for determining costs in the SBCM would be a gigantic undertaking.²⁸ If there is no change to the current cost model methodology, SBCM-determined location costs would be used, but should be updated for inflationary impacts

²⁸ In the *FCC NOI* the FCC has presented a series of questions regarding inputs that should be used to update as it considers modifications to the CACM. In light of the Commission's resource limitations, RIC respectfully submits that as a practical matter the Commission would be well served to follow model input/output modifications developed by the FCC as opposed to independently pursuing data needed for cost model modifications.

as recommended by RIC above, to calculate each carrier's share of the High Cost Program budget for BDS and ongoing expense support.²⁹ The RIC members do not believe it is necessary at this juncture to open a proceeding to potentially modify cost model inputs/outputs, but suggest the Commission monitor the *FCC NOI* for possible direction on this matter.

Should the Commission ensure that costing data is consistent with the BEAD program by obtaining and utilizing the updated cost model estimates that CostQuest has prepared for the NTIA? Why or why not?

RIC does not possess information regarding changes that may have been made to the cost model to be used for BEAD. Therefore, RIC cannot determine if it is in the best interest of consumers, carriers or the Commission to use the cost data from BEAD in connection with the High Cost Program. Once more is publicly known about the BEAD cost model, more informed recommendations can be made.

Should the Commission focus on restructuring the high-cost mechanism with a revised cost model to determine largely ongoing support?

As a general matter, the RIC Companies believe that the Commission should obtain a revised/updated SBCM module with cost detail calculated on the basis of 2020 census block costs, subject to adjustments for inflation. Use of these updated costs based on the 2020 Census will ultimately provide a more up-to-date approximation of deployment costs, along with the inclusion of served locations utilized to calculate each carrier's distribution of the ongoing expense support budget. Further, if and when an updated model is produced as the culmination of the process begun by the FCC in the *FCC NOI*, the Commission should obtain rights to use that updated model in connection with calculating distribution of High Cost Program support.

²⁹ Again, further discussion of this topic is provided in response to the Task 2 inquiries at 14-19 below.

Should the Commission consider adding new benchmarks or requirements as a condition of receiving ongoing NUSF support? If so, what should those benchmarks be?

As a general matter, RIC opposes Commission imposition of specific rates or ranges of rates on broadband services provided in Nebraska as a condition of receiving ongoing NUSF support. To the extent the Commission is seeking guidance on reasonable rate comparability benchmarks for broadband services, RIC recommends that the Commission reference the FCC's most current data which sets forth the results of the urban rate benchmark for fixed voice and broadband services.³⁰

Should the Commission consider support levels utilizing the FCC's new location fabric? If support is determined on a cost per location basis, should there be a transition period; if so, how long should the transition period be?

Please refer to RIC's filed Comments in response to Section II.A of the *NUSF-139 Order*³¹ and Mr. Davis' testimony on behalf of RIC at the Commission's October 24, 2023 hearing for RIC's recommendations that are responsive to this inquiry.

Task 2 – Ongoing Support Transitional Mechanism

We seek comment on how to transition the Commission's ongoing high-cost support mechanism as more and more areas are served with broadband infrastructure. Should the Commission continue to rely on modeled costs to determine ongoing support calculations?

RIC respectfully recommends that the Commission should open a separate docket to investigate possible adjustments to the calculation and distribution of ongoing expense support from the High Cost Program. This subject is complex and presentation not only of written comments, but also of testimony from subject matter experts at one or more hearings at which

³⁰ <https://www.fcc.gov/document/2023-urban-rate-survey-posting-data-and-minimum-usage-allowance> .

³¹ See RIC Comments filed in response to the *NUSF-139 Order*, Section II.A at 2-3 (Sept. 29, 2023).

the Commissioners and Staff can ask questions of such experts would be beneficial to the Commission's consideration of the issues set forth in the *NUSF-139 Order* relating to Task 2. Considerable time and resources will be required for the Commission to address the issues presented by Section II.B of the *NUSF-139 Order* (review of the High Cost Program goals and strategic plan) and the other six Tasks presented in Section II.C. The importance of the High Cost Program ongoing expense support mechanism to the long-term provision of broadband services to all Nebraskans warrants a separate proceeding in which the Commission's full attention can be focused on this subject.

Notwithstanding the foregoing recommendation, RIC provides the following comments and questions in response to the foregoing inquiries.

First, the existing High Cost Program distribution methodology has shifted, and will continue to shift, distribution of rate-of-return ("RoR") companies' High Cost Program support from broadband deployment to ongoing expenses as more and more locations are built out to provide broadband access at prescribed speeds. In 2021, 57% of the RoR High Cost Program budget was allocated to ongoing expenses support. In 2022, this percentage increased to 64.86%. In 2023, 68.85% of the RoR budget was designated to ongoing expense support.³² A relevant question is whether the current methodology is pivoting High Cost Program support to ongoing expenses support quickly enough? A further question regarding High Cost Program support distribution is whether the current allocation of 10% of the price cap ("PC") companies' High Cost Program budget to ongoing expenses continues to be appropriate?

³² Source: [2023 NUSF 99-108 Model - PUBLIC.xlsx \(live.com\)](#) .

Second, and perhaps even more importantly, is the allocation of 50% of the overall High Cost Program budget to RoR carriers adequate? Or should that percentage be increased, particularly in light of the large amounts of High Cost Program support allocated to but unused by PC carriers during the 2021 through 2023 period which amounts are now held by the Commission for redistribution through reverse auctions or rural-based plans? As stated above, nearly \$22 million of High Cost Program support has, to date, been withheld or withdrawn from PC carriers and awaits re-distribution by the Commission through reverse auctions or rural-based plans.³³

Third, even though adjustments to ongoing expense support provided by the High Cost Program are essential, there is also the need to recognize that federal universal service funding of capital construction costs to build out currently unserved and underserved locations is inadequate to cover actual costs, or even modeled costs, of many locations served by RoR carriers. In the federal universal service fund (“FUSF”) program, several Nebraska RoR carriers recently elected E-ACAM. Other Nebraska RoR carriers elected not to do so. Regardless of the FUSF program in which a RoR carrier participates, the average life of the fiber assets used to provide broadband service exceeds the longest program support period yet adopted by the FCC (15 years for E-ACAM).

The reality also is that with regard to the E-ACAM program, available support dollars do not fully recover the costs (model or actual) to deploy and maintain the network since the FCC funding of unserved and underserved locations was limited to the greater of (a) a per location cap of \$350 per month or (b) 80% of model cost. Based on this formula, the amount of unrecovered

³³ See discussion at 5-8 *supra*.

cost can be calculated for each E-ACAM-electing RoR carrier. Since unrecovered capital construction and ongoing expense costs remain for all Nebraska E-ACAM-electing RoR carriers, the Commission should minimally continue to provide not less than the \$2 million of broadband support for Capped Locations provided by the High Cost Program in 2022 and 2023 for a minimum term of five (5) years, or until the expiration of the E-ACAM buildout timeframe.

Fourth, there is the matter of needed adjustments to the SBCM. Cost adjustments, including material and labor cost adjustments, are warranted. The need for inflation adjustments have been discussed elsewhere in these Comments.³⁴ Updates in the SBCM from 2010 Census-based data to 2020 Census-based data is an additional need that RIC has addressed.³⁵

Fifth, RIC believes that High Cost Program support should be earmarked to assist carriers with expenses created by “unfunded mandates” such as implementation of cybersecurity programs, implementation of STIR/SHAKEN and potentially implementation of NG 911 networks.

In response to the Commission’s inquiry as to whether the Commission should continue to rely on modeled costs to determine ongoing support calculations, RIC’s response is “yes”; however, as RIC has previously stated, attempting to update all the cost inputs used for determining costs in the SBCM would be a gigantic undertaking and would be ill-advised.³⁶

In any event, due to the breadth of the inquiries and issues presented by the *NUSF-139 Order*, as stated above, RIC recommends that issues relating to ongoing expenses support be segregated and addressed in a separate proceeding in order that such issues may be thoroughly

³⁴ See discussion at 8-12 *supra*.

³⁵ See discussion at 11-12 *supra*.

³⁶ See discussion at 12 *supra*.

considered based upon expert testimony and recommendations presented in a separate proceeding.

Now that the Commission has access to more granular location data, should the Commission utilize this more granular location data to derive more ongoing support calculations?

The most granular level of SBCM cost data which historically has been used for calculating ongoing support is at the census block level. That is, all locations in a particular 2010 census block have been calculated to have the same average per location cost. The new CostQuest model also calculates per location cost at an average for the census block, although the census blocks have been updated to be the 2020 census blocks. RIC recognizes that more granular location data is available that identifies (a) where, on the Fabric map, a broadband serviceable location exists and (b) speeds that are available from providers, but as stated previously, RIC does not think the location data is yet accurate. Therefore, RIC recommends that the Commission should utilize an updated SBCM model containing costs at the 2020 census block level and apply those costs to BDC data beginning with the High Cost Program distributions in 2025. For additional information on this subject, please refer to RIC's responses to the last Commission inquiry in Task 1 set forth at page 14 above.

How should the Commission take into account the ongoing costs for non-fiber-based deployments?

The Commission should not take into account ongoing costs for non-fiber-based deployments. To do so would be contrary to the Commission's goal to provide High Cost Program support for scalable broadband networks based upon resilient fiber-based networks. Non-fiber-based deployments have limited long-term use and are not easily scalable to higher speeds. High Cost Program ongoing expense support should not be available for unlicensed

fixed wireless technology. This conclusion is consistent with BEAD's disqualification of fixed wireless technology from BEAD grants.

As an alternative to utilizing a cost model, should the Commission rely on other data, such as historic provider specific data to obtain cost information relative to maintenance, operational costs, and continue a grant-based structure for planned network investments?

RIC recommends against the Commission's use of any alternative to a cost model to determine distributions of High Cost Program support. Please refer to RIC's responses to the preceding questions posed by the Commission with regard to this Task 2 for additional observations that are relevant to the foregoing inquiry.

Should the Commission conduct its own analysis of expected revenues for the purposes of determining NUSF support? Why or why not?

RIC recommends that the Commission should adopt the revised monthly customer revenue benchmark used by the FCC in the E-ACAM proceeding of \$63.69 which was based on 25/3 Mbps rates and a 70% take rate ($\$90.98 \times 70\% = \63.69).³⁷ Further, RIC suggests that the Commission should closely monitor the *FCC NOI* regarding the treatment of revenues in calculating support.³⁸

Task 6 - Coordination with other funding to ensure the NUSF is not providing duplicative support

In addition to the data that is currently being collected, what additional data should the Commission collect to ensure that NUSF support is not duplicative of any other state and federal support?

³⁷ *Connect America Fund, et al.*, Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, WC Docket Nos. 10-90, 14-58, 09-197, 16-271, RM-11868, FCC23-60 at para. 70 (rel. July 24, 2023).

³⁸ See *FCC NOI* at paras. 172 and 173. Comments filed and to be filed by interested parties in response to questions presented by the FCC in the foregoing paragraphs should be instructive to the Commission as well as subsequent orders entered by the FCC.

RIC believes that the foregoing question should be re-framed in order that responsive comments may be more useful. First, the question should be bifurcated to separately address support for the capital costs of broadband deployment and support for ongoing expenses. RIC expects that different data will be needed to determine the possible existence of “duplicative support” for these two differing purposes. Second, there needs to be consideration of the sufficiency of support provided to cover the costs of broadband deployment and the costs of provisioning, maintaining and upgrading the network. For example, with regard to E-ACAM, support levels for many high cost locations are not sufficient to fully recover all the capital costs nor all the ongoing expenses required to deploy fiber and operate broadband networks. Supplemental High Cost Program support above and beyond the federal funding level for high cost locations is necessary and non-duplicative.

Regarding broadband deployment support, data is available that allows a determination of the existence of duplicative support on a location basis. The Nebraska Broadband Map has layers to show the locations that have received or are receiving build out support from a state or federal program. As future support is provided from a program such as BEAD, it would be expected that the Nebraska Broadband Map will be updated to reflect the additional locations for which capital construction support will be provided.


Data shown in the Nebraska Broadband Map should be sufficient for the Commission to conclude that no duplicative support has been, is or will be provided. If the Commission concludes that additional data is needed in connection with its evaluation of duplicative support, the Commission should inform carriers of the need and specify the additional data to be provided. Carriers should be afforded an opportunity to comment on the extent of the burden or costs involved in compliance with any Commission request for submission of additional data.

IV. CONCLUSION

As stated above, the Nebraska Rural Independent Companies appreciate the opportunity to provide these Comments in response to Section II.C, Tasks 1, 2 and 6 of the *NUSF-139 Order*. RIC looks forward to further participation in this proceeding.


Dated: November 17, 2023.

Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Great Plains Communications, LLC., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Sodtown Communications, Inc. and Three River Telco (the "Rural Independent Companies")

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of November 2023, an electronic copy of the foregoing pleading was delivered to the Nebraska Public Service Commission at psc.nusf@nebraska.gov and was served electronically on the parties to this proceeding.


Paul M. Schudel